

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

In the Matter of:)	
)	WC Docket No. 02-148
Application by Qwest Communications)	
International, Inc. for Authorization Under)	
Section 271 of the Communications Act)	
To Provide In-Region, InterLATA Service in)	
the States of Colorado, Idaho, Iowa,)	
Nebraska & North Dakota)	

**Comments of the
Nebraska Public Service Commission**

July 3, 2002

Anne C. Boyle, Chair
Gerald L. Vap, Vice-Chair
Frank E. Landis, Commissioner
Lowell C. Johnson, Commissioner
Rod Johnson, Commissioner

Nebraska Public Service Commission
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I. EXECUTIVE SUMMARY

Over the last 4 years, the Nebraska Public Service Commission (“Nebraska Commission”) evaluated Qwest Corporation’s compliance with the checklist contained in Section 271(c)(2)(B) of the Telecommunications Act of 1996 (“the Act”), Track A, the public interest requirements of Section 271(d)(3)(C), and the criteria in Section 272 of the Act.

The Nebraska Commission conducted and relied on complete, open and fair processes that allowed full participation by all interested parties. The Nebraska Commission’s recommendation to the FCC that it supports Qwest’s applications to provide interLATA services in Nebraska is based on the comprehensive factual record that was developed both before the Nebraska Commission and in multi-jurisdictional collaborative proceedings.

Summary of hearings and important procedural events

The Nebraska 271 Application was filed on June 23, 1998. Shortly thereafter, several intervening parties (CLECs) objected and refused to respond to discovery requests propounded by U S WEST (USW). USW moved to compel. The Nebraska Commission then retained a retired judge as an ALJ to oversee all aspects of discovery. The ALJ issued an order, which the Nebraska Commission adopted, requiring all CLECs, with the exception of MCI, to respond to USW’s discovery request.¹ The Nebraska Commission denied motions for reconsideration.² Rather than comply, AT&T, WorldCom, Sprint and later Cox requested from the Commission, and were granted, status as “limited parties.” As such, AT&T, Worldcom, Sprint and Cox were not permitted to present testimony, but each had the right to cross-examine and submit written briefs. As a result of that order, these “limited party” CLECs actively participated in the first two sets of hearings on 271 in 1998 and 1999 through cross-examination and briefs only.

The November 1998 Hearing and Resulting April 9, 1999 Order: The first 271 hearing before the Nebraska Commission occurred on November 16-20, 1998, resulting in the Nebraska Commission’s April 9, 1999 Order. The April 9, 1999 Order approved Track A, and found that USW had satisfied Checklist Items 3, 7, 8, 9, 10, 11, 12 and 14, and Section 272 of the Act. <http://www.nol.org/home/NPSC/bigmana.pdf> The April 9, 1999 Order required Qwest to periodically present performance data showing that it continued to remain in compliance with the requirements of these checklist items. In that order, we stated, “before the Commission enters a final order, U S WEST must provide updated data on those items we have already found in compliance. By so doing, the Commission can evaluate whether U S WEST is continuing to meet its obligations.”³

¹ Transcript of hearing on discovery teleconference, 9/3/98; Progression Order 9, 12/4/98. <http://www.nol.org/home/NPSC/c-1830va.htm>

² Minutes of Emergency Meeting of Nebraska Commission 9/8/98.

³ April 9, 1999 Order at 58.

The September 1999 Hearing and Resulting May 10, 2002 Order: On September 9-10, 1999, the Nebraska Commission held its second hearing, this time concerning checklist items 1, 4, 5 and 6. Prior to the hearing, on June 8, 1999, the Nebraska Commission issued procedural progression order No. 11 which required Qwest to provide the parties with at least 30 days advance notice of its intention to submit written testimony on a subject. <http://www.nol.org/home/NPSC/c-1830pr.htm> Pursuant to procedural order No. 11, all interested parties would then simultaneously file written testimony, with the Nebraska Commission subsequently holding a hearing in which rebuttal testimony would be presented live. All parties had an opportunity to cross-examine witnesses and submit post-hearing briefs. The Nebraska Commission issued its second decision on May 10, 2000, conditionally approving checklist item 1, but withholding judgment on checklist items 4, 5 & 6. <http://www.nol.org/home/NPSC/C-1830.pdf>

Nonetheless, in the May 10, 2002 Order, the Nebraska Commission made a specific finding that the Omaha metropolitan statistical area is continuing to evolve into a more competitive local market. To further develop the record, the Commission provided guidance to USW as to the additional evidence that would be required and the form in which the Nebraska Commission would like the evidence presented before it would fully endorse the 271 application.

The October 1999 Hearing: The Nebraska Commission held the third 271 hearing regarding Qwest's provisioning of long-term number portability (LNP) in October 1999. Although the Nebraska Commission had already found that Qwest met the requirements of checklist item 11, Cox Nebraska Telecom had specifically alleged that Qwest's LNP process was not working as well as expected. <http://www.nol.org/home/NPSC/c-1830n11.htm>

Workshop Review by the Nebraska Commission of UNE Combinations and Emerging Services: Qwest submitted its initial 271 case to the Nebraska Commission before the FCC's issuance of the UNE remand and Line Sharing Orders. As a result, Qwest had not submitted evidence to the Nebraska Commission on line sharing, subloop unbundling, dark fiber, packet switching or certain aspects of UNE combinations. By the summer of 2000, Qwest had collaborative workshops pending in a number of venues including Arizona. On the recommendation of Qwest, the Nebraska Commission agreed to join the Arizona workshops on these subjects because Arizona was the only additional state where Cox, an active participant and competitor in Nebraska, was also involved. The Nebraska Commission sent Chris Post, legal counsel for the 271 Application, and Gene Hand, Director of the Communications Department, to these workshop proceedings.

AT&T, Cox, Sprint and Worldcom Return to Full Party Status: On May 18, 2001, the joint CLECs moved for removal of limited party status. Qwest did not oppose this motion, and informed the Nebraska Commission that it had no opposition to the CLECs fully rejoining the process. Subsequently, by order of the Nebraska Commission on June 5, 2001, AT&T/TCG, Cox, Sprint and Worldcom were made full parties to the proceedings. <http://www.nol.org/home/NPSC/C-1830PO1701-06-05.PDF>

The July 2001 Hearings: After the Arizona workshop proceedings concluded, Qwest provided the Nebraska Commission with notice that it intended to submit evidence of

Qwest's compliance with the emerging services and UNE Combinations aspects of the checklist. Qwest also stated that, since April 1999 when the Nebraska Commission initially approved Qwest as to Section 272, the Qwest-U S WEST merger had occurred and, as a result, a new company had been identified as the 272 affiliate.

On July 9, 2001, the Nebraska Commission held a formal proceeding on these subjects, and allowed any interested party to testify about Qwest's compliance with these aspects of the Act. On September 19, 2001, the Nebraska Commission issued its decision reaffirming that Qwest remained in compliance with Section 272 of the Act. <http://www.nol.org/home/NPSC/C-183027209-19-01.PDF> On the same day, the Nebraska Commission also determined that subject to successful completion of the ROC OSS Test, Qwest was in compliance with its obligations to provide unbundled network element and emerging services as required by Sections 251(c)(3) and 252(d)(1) of the Act. <http://www.nol.org/home/NPSC/C-183025109-19-01.PDF>

The Nebraska Commission's Review of Qwest's SGAT: On July 29, 1999, Qwest filed its original SGAT with the Commission in Application No. C-2081 pursuant to Section 252(f) of the Act. The Nebraska Commission initially ordered Qwest and all interested parties to identify a list of SGAT sections about which the parties could not reach resolution. Qwest filed its first revised SGAT on December 9, 1999, which was docketed by the Nebraska Commission on December 21, 1999, in Application No. C-2185. After the filing of the first revised SGAT, Qwest and competitive local exchange carriers ("CLECs") throughout Qwest's 14-state region participated in a collaborative process to explore and resolve hundreds of issues relating to specific provisions of Qwest's proposed SGAT. This collaborative process resulted in another revision to the SGAT, which Qwest filed on May 22, 2001, as the third revision to the Nebraska SGAT, which was docketed by the Nebraska Commission in Application No. C-2537.

After considering motions and oral arguments by multiple parties, on June 19, 2001, the Nebraska Commission issued its order finding that it would review the five reports issued by Mr. John Antonuk, Facilitator to the multistate workshop collaborative, as a starting point to determine the appropriateness of the SGAT language. <http://www.nol.org/home/NPSC/C-1830PO1801-06-19.PDF>. In addition, the Nebraska Commission also adopted the record of the multistate collaborative Section 271 proceeding ("Multi-State Proceeding") for purposes of SGAT review. After the Facilitator issued each of the five reports, interested parties had ten days to file comments, or to take issue with aspects of the recommended decision. The Nebraska Commission held separate hearings on each report.

For the purposes of determining the compliance of Qwest's SGAT with the Act, the Commission undertook a thorough and exhaustive review of the third revised SGAT, resulting in five separate orders from September 2001-January 2002. Before issuing its decisions on Qwest's SGAT, the Nebraska Commission carefully reviewed and considered the record of the multistate workshop, the comments of the parties in response to the each of the Facilitator's reports, and held oral argument on any part of the recommended decision about which any party objected. All parties were allowed to fully participate in these proceedings. After conducting its briefing, hearing and review process, the Nebraska Commission issued orders in its SGAT docket on the following dates 10/16/01 - Group 3 Report, Emerging Services and UNE

combinations SGAT Approved in Part <http://www.nol.org/home/NPSC/C-253710-16-01.PDF>; 10/30/01 - Group 1 report SGAT approved in part <http://www.nol.org/home/NPSC/C-2537Group101-10-30.PDF>; 11/20/01 - Group 2 Report SGAT approved in part <http://www.nol.org/home/NPSC/C-2537Group201-11-20.PDF>; 12/04/01 - Group 4 Report SGAT approved in part <http://www.nol.org/home/NPSC/C-2537Group401-12-04.PDF>; 01/08/02 - Group 5 Report SGAT approved in part <http://www.nol.org/home/NPSC/C-2537Group502-01-08.PDF>.

On January 25, 2002, Qwest filed its updated SGAT in Application No. C-2666, to respond to the Commission orders, add additional consensus language from the parties and make other required revisions. <http://www.nol.org/home/NPSC/c-2081.htm> Subsequently, on March 19, 2002, the Commission approved Qwest's updated SGAT.

The Multistate Proceeding on the QPAP: In August 2000, the Nebraska Commission joined state regulatory authorities from 11 of Qwest's 14 in-region states in the Regional Oversight Committee Post Entry Performance Plan ("ROC PEPP") collaborative. Between October 2000 and May 2001, the ROC PEPP held a series of extended conference calls and five multi-day workshops at which staff members from the 11 states, including Nebraska, as well as AT&T, WorldCom, other CLECs participated. The collaborative engaged in lengthy presentations and debate regarding the QPAP. As a result of this collaborative process, and at the request of CLECs and the various state staffs, Qwest made a number of revisions to its original QPAP. Information concerning the PEPP collaborative can be accessed at <http://www.nrri.ohio-state.edu/oss/Post271/index.htm/>.

Subsequent to the PEPP collaborative, Qwest and Nebraska Commission staff engaged in a further nine-state review of the QPAP conducted by Mr. John Antonuk of the Liberty Consulting Group ("Liberty") who acted as a third-party neutral Facilitator. By its order dated July 11, 2001, <http://www.nol.org/home/NPSC/C-253701-07-11.PDF> the Nebraska Commission formally joined the multi-state collaborative section 271 proceeding ("Multi-State Proceeding") for the review of the QPAP. Nebraska Commission staff participated in the "Multi-State Proceeding" with eight other states to evaluate and obtain a recommendation on the performance assurance plan. Information concerning the Multi-state QPAP collaborative can be accessed at <http://www.libertyconsultinggroup.com/>. The Nebraska Commission received comments on the Facilitator's Report and held oral argument on the issues on November 27, 2001.

The Nebraska Commission issued its QPAP decision on April 23, 2002. <http://www.nol.org/home/NPSC/C-1830QPAP04-23-02.PDF> Qwest subsequently filed a Motion for Rehearing and the Nebraska Commission heard oral arguments on that Motion on May 22, 2002. On May 29, 2002, the Nebraska Commission issued its decision on the Motion, granting in part and denying in part Qwest's Motion. <http://www.nol.org/home/NPSC/C-183002-05-29.PDF>. In response to the order, Qwest filed a revised QPAP with the Nebraska Commission on May 31, 2002, in the SGAT Application No. C-2666.

On June 10, 2002, Qwest filed a second revised Exhibit K [the QPAP] in the SGAT Application No. C-2666. <http://www.nol.org/home/NPSC/C-2750ExhibitKReplace.PDF>.

Two days later, the Nebraska Commission issued its order finding Qwest's QPAP to be compliant with its order and, with the filing of the QPAP, Qwest's 271 application to be in the public interest. <http://www.nol.org/home/NPSC/C-183002-05-07.PDF>.

The September 2001 and March 2002 Hearings on Actual Commercial Performance and Resulting May 7, 2002 Order: Qwest presented audited performance data to the Nebraska Commission in two separate hearings. Prior to that time, Qwest made regular filings of Qwest's performance results under the ROC PIDs both for the state of Nebraska and for the Qwest 14-state region. The September hearing was held before the Liberty data reconciliation process began and the March hearing was held after Liberty had concluded its audit of Nebraska data and most other states. In a May 7, 2002 Order, <http://www.nol.org/home/NPSC/C-1830Final02-06-12.PDF> the Nebraska Commission issued a decision formally finding that Qwest satisfied checklist items 4, 5 and 6 and continued to satisfy the previously approved items on the 14-point checklist.

The Liberty Consulting Data Reconciliation: In the period September 2001 through April 2002, the Liberty Consulting Group reconciled Qwest's data. The Liberty Consulting Group's reconciliation focused on Qwest's reported performance around interconnection trunks, unbundled loops and line sharing. At the conclusion of the reconciliation, Liberty reaffirmed that Qwest's reported performance data was "accurate and reliable." In its May 7, 2002 Order, the Nebraska Commission held that Qwest's audited and reconciled performance results demonstrate "that the Commission can rely on Qwest's performance data to evaluate whether Qwest satisfies Section 271 of the Act."⁴

The Nebraska Commission's Review Of Qwest's Compliance With Section 272, Track A, And The Public Interest Requirements Of Section 271(D)(3)(C): In November 1998, Qwest, then U S WEST Communications, Inc. (USW), presented its initial evidence to demonstrate compliance with Section 271. On April 9, 1999, the Nebraska Commission issued its first order, concluding that USW had established a separate affiliate, U S WEST Long Distance, Inc. (USWLD), which fully complied with the requirements of Section 272. However, Qwest Corporation (QC) subsequently advised the Nebraska Commission that, following the merger with USW, it had revised its plans for providing interLATA services through Qwest LD. QC ultimately decided to rely on Qwest Communications Corporation ("QCC"), instead of USWLD, as QC's Section 272 affiliate.

Because of this change, the Nebraska Commission concluded that it should supplement the record on its previous findings with respect to Section 272, and held a hearing for this purpose on July 9, 2001. The witnesses submitted written testimony prepared in advance of the hearing, and upon the parties agreement, the 272 transcripts and exhibits from the Multistate Collaborative Workshops were also incorporated into the record. The Nebraska Commission on September 19, 2001, issued a final order affirming its original decision and restating that Qwest has satisfied the requirements of Section 272. <http://www.nol.org/home/NPSC/C-183027209-19-01.PDF>

⁴ May 7 Order at para. 26.

The Nebraska Commission has also found that Qwest meets the Track A requirements of Section 271. At the original November 1998 hearing, USW presented substantial evidence that it met the Track A requirements of the Act. In its April 9, 1999 Order, the Nebraska Commission found that Qwest met the Commission's Track A requirements. <http://www.nol.org/home/NPSC/bigmama.pdf> Since that time, as demonstrated in the subsequent filings made by Qwest and competitive information before the Nebraska Commission, the evidence demonstrates that the level of competition in Nebraska has increased.

In its April 9, 1999 Order, when addressing the issue of public interest, the Nebraska Commission found that it would welcome then USW into the interLATA market when it satisfied the remainder of the checklist. Since that time, the Nebraska Commission has instituted substantial additional processes relating to the QPAP. In its June 12, 2002 Order, when the Nebraska Commission approved Qwest's revised QPAP, it reaffirmed that Qwest meets the public interest requirement of the Act.

Nebraska Commission's Review of Qwest's Change Management Process: The Nebraska Commission thoroughly examined and reviewed Qwest's Wholesale Change Management Process ("CMP") both in written submissions by parties and in an open workshop. Beginning in October 2001, Qwest regularly filed status reports with the Nebraska Commission on the progress of the redesign process, which included the documents discussed in, and the minutes from, the redesign meetings. On May 6, 2002, the Nebraska Commission held a workshop with multiple parties participating regarding Qwest's CMP. The Nebraska Commission found that CLECs have had -- and shall continue to have -- substantial opportunities for meaningful input into the design and operation of Qwest's change management process. In a separate order entered June 12, 2002, the Nebraska Commission found that Qwest's CMP meets the requirements of Sections 251(c)(3) and 252(d)(1) of the Act. <http://www.nol.org/home/NPSC/C-1830Change02-06-12.PDF>

The Nebraska Commission's Cost Docket to review Qwest's Pricing: In September 1996, the Nebraska Commission opened Application No. C-1415 to investigate cost studies and to establish rates for interconnection, unbundled network elements, transport and termination, and resale services for USW. The Nebraska Commission opened a subsequent docket, Application No. C-2516, on April 17, 2001, to receive new evidence on the same issues because of the concern that the evidence in the previous docket may have become stale. On April 23, 2002, the Commission issued a final order setting rates in this docket and specifying that the rates would be implemented prior to August 8, 2002. <http://www.nol.org/home/NPSC/C-251604-23-02.PDF> Qwest filed its compliance filing on May 3, 2002, including detailed runs with the Nebraska Commission-ordered adjustments of Qwest's cost models and costs studies as required by the April 23, 2002 Order.

On May 24, 2002, Qwest filed a revised SGAT with rates set forth on Exhibit A in Application No. C-2666. Subsequently, on May 31, 2002, a substitute Exhibit A which included (1) all the rates determined by the Commission in the cost docket (Application No. C-2516), (2) new proposed lower rates for several of the Unbundled Network Elements ("UNEs") and Local Interconnection Services ("LIS") rates set by the Commission in the cost docket and

(3) rates for some UNEs which were developed after Qwest filed its proposed rates in the cost docket and which had not been previously reviewed and approved by the Nebraska Commission in a cost proceeding.

After reviewing Qwest's substitute Exhibit A, on June 5, 2002, the Nebraska Commission entered an order finding, after certain limited corrections were made, that it was in the public interest to place the rates in Qwest's May 31, 2002, subsequent filing of Exhibit A in Application No. C-2666 into effect on June 7, 2002. <http://www.nol.org/home/NPSC/C-2516pi4902-06-05.PDF> The June 5, 2002 order specifically found: (1) that all the rates ordered in Application No. C-2516 are deemed approved; (2) that proposed lower UNE and LIS elements rates filed by Qwest on May 31, 2002, in Exhibit A to the SGAT⁵ are effective as of June 7, 2002; and (3) that rates filed by Qwest on May 31, 2002 in Exhibit A⁶, which were not included in Application No. C-2516, are effective as of June 7, 2002.

The ROC OSS Test: Thirteen states participating in the Regional Oversight Committee (ROC), including Nebraska, initiated a collaborative process to design an overall plan to ensure that Qwest's operational support systems (OSS) are available to CLECs in an open and non-discriminatory manner. KPMG Consulting, Inc. (KPMG) and Hewlett-Packard Consulting (HP) were consultants hired by the ROC for Qwest states to conduct the test of Qwest's OSS. The ROC created an Executive Committee, now comprised of seven state regulatory commissioners, including Nebraska Commissioner Anne Boyle, as well as a Steering Committee comprised of regulatory staff members from each participating state commission. The Steering Committee oversaw the test process, assisted in developing and implementing the test, and was the first point of escalation for resolving test issues. Since mid-2000, Mr. Dick Palazzolo, Telecommunications Specialist - Communications Department with the Nebraska Commission, has chaired the Steering Committee. The Executive Committee reviewed the overall progress of the test and made final decisions on escalated test issues.

During the pendency of the test, on November 28, 2001, KPMG, MTG Consulting and HP, in an open proceeding, presented to the Nebraska Commission the current status of the tests. On May 28, 2002, KPMG and HP issued Qwest Communications' OSS Evaluation Final Report ("Final Report"). Information concerning the ROC OSS collaborative, including the final report, can be accessed at <http://www.nrri.ohio-state.edu/oss/oss.htm>.

On May 29, 2002, Michael Weeks of KPMG presented the results of the ROC OSS Test to the Nebraska Commission. Parties were also given the opportunity to comment to the Nebraska Commission on the OSS final report. On June 3, 2002, Qwest, AT&T and Cox participated in final hearings before the Nebraska Commission on the ROC OSS Test. After carefully examining the results of the ROC OSS Test, on June 12, 2002, the Nebraska Commission issued its final order finding that Qwest's OSS was adequate to meet the relevant checklist requirements under Section 271.

⁵ Application No. C-2666

⁶ Id.

The Nebraska Commission's Final 271 Order: The Nebraska Commission has conducted multiple proceedings in order to ensure that Qwest satisfies the requirements of Section 271. In addition, the Nebraska Commission joined multistate proceedings to test Qwest's OSS, to review Qwest's SGAT, to obtain additional information about UNE Combinations and emerging services, to reconcile Qwest's performance data, and to create an appropriate performance assurance plan. The procedures used by the Nebraska Commission to determine Qwest's compliance with the Act were exhaustive and thorough. The Nebraska Commission's determinations regarding Qwest's compliance with Track A, the checklist contained in Section 271(c)(2)(B) of the Act, the public interest requirements of Section 271(d)(3)(C), the SGAT and the criteria in Section 272 of the Act reflect the collaborative efforts of Qwest, the Nebraska Commission, third party evaluators, and all interested parties, including CLECs. In sum, the Nebraska Commission has fully and fairly evaluated whether Qwest satisfies the requirements of Section 271 and, by unanimous vote, concluded in its final summary order that Qwest meets all aspects of Section 271.

Finally, "in light of Qwest's achievements toward irreversibly opening its markets to competition, the Nebraska Commission at this time, recommends to the Federal Communications Commission that Qwest be allowed to enter the in-region interLATA long distance market." <http://www.nol.org/home/NPSC/C-1830Final02-06-12.PDF>

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International, Inc. for Authorization Under Section
271 of the Communications Act to Provide In-
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WC DOCKET NO. 02-148

Concurring Opinion
Commissioner Anne C. Boyle

July 3, 2002

The Nebraska Public Service Commission, in forwarding this recommendation to the FCC, finds that Qwest Communications, with the information provided to us, is in compliance with the requirements of section 271. Nonetheless, this recommendation is forwarded with ongoing concerns regarding Qwest's commitment and willingness to cooperatively work to maintain existing markets as well as encourage additional markets. The following is not meant to impede Qwest's application, but only to point out that ongoing regional oversight is essential to maintain and improve competition.

The Regional Oversight Committee (ROC) collaborative has been characterized as the most open and robust test of any test among the Bells. I agree wholeheartedly. It has also been an economical and efficient method to meet the required review by states. It allowed the talent of 13 state staffs to participate. The combined population of the 14 states is approximately 36.2 million. Arizona, with 5.1 million, did not take part in the collaborative. Three of the remaining states, Minnesota, Washington and Colorado have a combined population of 15.1 million which leaves a balance of 16 million spread across 11 states. As a comparison, Texas has 20 million. While Texas covers a large geographic area, it is not as large as the combined areas of the 14 or even the 11 states in the Qwest region.

Qwest's actions last January, when they attempted to implement two proposals, served as an alert to post-271 behavior. The first was a letter to their customers informing them that Qwest intended to use customer proprietary information for marketing purposes. The notice was unclear. The explanation and phone number to opt-out was not easily detected. Initially, Qwest defended itself. Only after severe criticism from a number of commissions, consumers, customers and the initiation of some state commission and state attorney general investigations, did they choose to withdraw the proposal according to them, until a later time. Some have

argued that what they did was legal. No one argues that the way in which they noticed their customers was deceptive.

Second, Qwest implemented a local service freeze. Qwest initially said the freeze was for consumer protection. At a Nebraska hearing, however, when asked if there was any evidence of local slamming, their representative answered “no.” This is compounded by the fact that when the freeze was implemented their own employees had not been given complete guidance on how to handle CLEC calls to release the freeze. Some have concluded that the local freeze was intended to make it more difficult for Qwest customers to transfer service. The Nebraska Commission issued a moratorium on the use of such a freeze until evidence is presented that a freeze is in fact needed. In my opinion, these actions were aggressive preemptive strikes to place themselves in a superior marketing position as soon as they received 271 approval.

On another matter, Qwest’s insistence on use of the term “voluntary agreement” as part of their post-assurance plan is troubling. They admitted many times during hearings that their 271 application and their SGAT, or model interconnection agreement, would be incomplete without a backsliding mechanism or QPAP, as it came to be known. However, when challenged on the use of the word “voluntary”, they insist that it is voluntary. For the record, no one I know, other than Qwest personnel, believes the QPAP is anything other than mandatory. It is a prerequisite of approval. There has been concern expressed that their use of the word “voluntary” will only allow Qwest to argue they are not required to live by the agreements or to accept ordered changes because the agreements allegedly are “voluntary”.

The discovery of secret agreements in Minnesota is another troubling matter. If there were such agreements which gave special treatment to a competitor or agreements which required a company to withdraw as a protestant in Qwest’s 271 proceedings, the thoroughness of the process is questionable.

Qwest must prove that they are not an impediment to the vitality of present markets or the advent of new markets. Until that time, critical oversight must continue. Qwest has yet to agree to a post-entry regional collaborative effort suggesting that they prefer to argue unresolved issues on a state-by-state basis. Without a regional agreement in place before 271 approval, the Qwest states will incur the dissolution of the combined talent of the state staffs who participated in the 271 review. Creation of a post-entry collaboration, agreed upon by all or even a number of states, is far superior to a piecemeal, state-by-state, approach.

Finally, as a member of the ROC OSS Executive Committee, I extend gratitude to all involved in the collaborative effort and appreciate the guidance and cooperation received from the staff members of the Federal Communications Commission and Department of Justice.

Anne C. Boyle, Chair

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Concurring Opinion
Commissioner Frank E. Landis

July 3, 2002

With this filing, the Nebraska Public Service Commission submits its comments to the FCC regarding Qwest's compliance with the requirements of Section 271 in Nebraska. Our final order very simply states that, "in light of Qwest's achievements toward irreversibly opening its markets to competition, the Nebraska Commission at this time, recommends to the Federal Communications Commission that Qwest be allowed to enter the in-region interLATA long distance market."

I commend my fellow commissioners and commission staff for a job well done. With a relatively small staff, with many responsibilities, the Nebraska Commission has devoted a great deal of time and resources to this proceeding. I would like to particularly acknowledge Commissioner Anne Boyle, who has invested countless hours as a member of the ROC Executive Committee. Furthermore, I would like to thank both Dick Palazzolo and Chris Post from our staff for their dedication and commitment throughout this long review process.

Competition in Nebraska has grown since we began this process in 1998. While competition in local service may not be thriving in all parts of Nebraska, it has a definite foothold in our metropolitan areas. It is my hope, that from this foothold, "choice" will continue to grow and spread throughout the state.

Frank E. Landis, Commissioner